IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Kailash Chandra
vs.
Gopallal and others.

S.B. Civil Misc. Appeal No.1066/2006 against the order dated 31.7.2006 passed by Additional District Judge No.2, Bhilwara in Civil Misc. Case No.62/2006.

Date of Judgment ::: 23.11.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Saruparia, for the appellant.

Mr. KC Samdariya, for respondent no.2 – Savitri Devi

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BY THE COURT :

Heard learned counsel for the parties.

The plaintiff/appellant has filed this appeal to challenge the order of the trial court dated 31.7.2006 whereby the plaintiff/appellant's application for grant of injunction against alienation of the property in dispute was dismissed.

Brief facts of the case are that the plaintiff filed a suit for partition alleging that defendant Savitri Devi is also member of joint Hindu family. One property was purchased in the name of Savitri Devi in the year 1973 which is also subject matter in the suit. According to the plaintiff, joint family properties of three brothers were divided by executing a Pratigya Patra dated 29.5.1980. Thereafter, one Bhanwar Lal Joshi was appointed Arbitrator and he passed the award on 29.12.1985.

According to the plaintiff, the property which was purchased in the name of Savitri Devi in fact is joint Hindu family property and was purchased by the fund of three brothers and as per the award, this property was kept as joint Hindu family property. According to the plaintiff, the property in dispute remained in joint possession and since it was not partitioned, therefore, the plaintiff is seeking partition of the property.

According to defendant Smt. Savitri Devi, she purchased this property by registered sale deed dated 14.12.1973. There were total four purchasers and except Savitri Devi, three purchasers are not the relatives of defendant Savitri Devi or any of her family members. This property was purchased by her from the funds of her brothers. The property in dispute was partitioned

in the year 1974 and one of the portion of the property came in the share of defendant Savitri Devi. Defendant Savitri Devi obtained a lease deed in her name from U.I.T. for the land in dispute so that she may use the property for residential purpose and the U.I.T. issued the lease deed on 31.5.2001.

According to learned counsel for Smt. Savitri Devi, the property in dispute was the self acquired property of Savitri Devi and was purchased by her from the fund given by her brother. It is also submitted that the ladies are not co-parceners which is the law settled by the Hon'ble Supreme Court in the case of Smt. Pushpa Devi vs. The Commissioner of Income Tax, New Delhi reported in AIR 1977 SC 2230 and, therefore, she cannot even put her property in common hotch potch of the joint Hindu family. It is also submitted that in Pratigya Patra, there is no mentioned of this property of Savitri Devi which clearly reveals that it was never treated as joint Hindu family property by the joint Hindu family itself. It is further contended that Savitri Devi was never party to any arbitration agreement authorising Shri Bhanwar Lal Joshi to pass any award in respect of her property. It is also submitted that it is clearly mentioned in the award dated 29.12.1985 that two brothers will pay certain amount to the husband of Savitri Devi which clearly proves that the property in dispute was never the

property of joint Hindu family property. Had it been a joint family property, then there would not have arisen any question of making payment by two brothers to the husband of Savitri Devi.

Learned counsel for respondent Savitri Devi further contended that the alleged award dated 29.12.1985 has not been made rule of the Court and, therefore, is not executable. It is submitted that respondent Savitri Devi, therefore, has absolute right to sell the property and even if any case is made out by the appellant for the property in dispute, then the purchaser is bound by the decision given in this suit by virtue of principle of lis pendence.

I considered the submissions of learned counsel for the parties and perused the reasons given in the impugned order.

The facts which are not in dispute are that the property in dispute was purchased by registered sale deed dated 14.12.1973. In the sale deed, there were four purchasers namely, Bhupal Singh, Sardar Singh, Shobha Lal and Savitri Devi. Savitri Devi's case is that a partition took place in the year 1974 amongst all the four purchasers and portion of the said immovable property fell in her share. The document dated 29.5.1980 itself said to be deed of partition

between three brothers including the property referred above, were dealt with, in the arbitration proceedings and the award was passed by the Arbitrator touching the above referred property.

It is alleged that in the arbitration proceedings, the properties of one of the brothers of the appellant was given to the husband of Savitri Devi and thereby, the husband of Savitri Devi took benefit of award dated 29.12.1985. This clearly shows that the properties which were not in the name of three brothers were also dealt with, with the consent of the parties to the arbitration proceedings and this also shows that the properties of the joint Hindu family remained in the name of different persons. In the year 1973, Savitri Devi already married to Gopallal, one of the party to the document dated 29.5.1980 and award dated 29.12.1985 and thereby, she was member of joint Hindu family property. It is also submitted that Savitri Devi never objected to these documents dated 29.5.1980 and 29.12.1985.

The questions with respect to the construction of the documents dated 29.5.1980 and 29.12.1985, the purchase of the property out of the funds of the joint Hindu family property and whether the property was purchased by Savitri Devi from the funds of her brother, are the questions raised in this litigation.

If all these are ignored, even then the question will arise whether Savitri Devi consented the act of her husband and unauthorised him to deal with the property in question in view of the fact that it is admitted fact that Savitri Devi and her husband are living together even after the arbitrator's award dated 29.12.1985 and Savitri Devi did not chose to challenge the act and action of her husband for such a long period. In a family matter, where the documents were executed and the husband dealt with the property of the wife, then the question may arise whether he acted with consent or with the implied authority or not. Apart from it, the question may arise whether the husband dealt with the property as ostensible owner or not.

It appears from the order of the trial court that the trial court merely applied its mind to the language used in the document which projected that the property stands in the name of Savitri Devi and, therefore, has observed that the husband has no authority to deal with the property in question. Inference from these documents require serious consideration in the facts of the case and in the light of family structure and how the family properties were dealt with by the parties. Therefore, serious disputed questions of facts are involved in this suit which requires consideration and till then, if the property is disposed of and third

party rights are created, then that will result into multiplicity of the proceedings only and, therefore, the appellant is successful in making out prima-facie case in his favour.

For balance of convenience, when prima-facie case is made out and immovable property is involved, normally, the property is required to be protected. If the contention of learned counsel for the respondent is accepted that any transaction made by Smt. Savitri Devi will be subject to principle of lis pendence, then it will be better to protect the property itself and avoid involving a third party interest in the suit property because of the reason that in the matter of sale of immovable property, question of actual consideration paid and received may result into further dispute between the parties. In view of the above, balance of convenience is in favour of protecting the property from alienation.

In case, interim order will not be passed, it will certainly cause irreparable injury to the plaintiff/ appellant as in case, he will succeed in proving the facts alleged and the questions which may arise in the litigation, then also, he may have to deal with the third party.

In view of the above discussion, this appeal is allowed, the order dated 31.7.2006 is set aside and

respondent Savitri Devi is restrained from alienating the property in dispute during the pendency of the suit.

The trial court is directed to decide the suit expeditiously.

It is made clear that none of the observations made by this Court shall be treated to be observations against any party.

(PRAKASH TATIA), J.

S.Phophaliya